IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.8422 of 2004

M/s BBC Associates Ltd Chennai..Petitioner
vs
Oman International Bank SAOG and ors..Respondents

Mr Sanjay Jain i/b Gabrel Pillai for petitioner
Mr.B P Colabawala and Rajiv Panday for respondent no.l
Mr.Vyapak Desai i/b M/s Singhi and co for respondent nos. 7,8,9 and l3.

CORAM: A.P.SHAH & S.C DHARMADHIKARI JJ.

Dated 26.l0.2004

P.C:

Heard advocates,

2. The petitioners take exception to the territorial jurisdiction of the Debts Recovery Tribunal(DRT) on the ground that the loan documents were executed at Chennai, mortgaged properties were also in Chennai and all the defendants were also from Chennai. It is therefore, contended by the petitioners that the tribunal at Mumbai has no territorial jurisdiction to entertain and try the original application. The objection was overruled by the DRT and the order of the DRT was confirmed in appeal by the DRAT

3. Section l9 of the Recovery of Debts Due to Banks and Financial Institutions Act, l993 states that where a bank or financial institution has to recover any debt from any person, it may make an application to the tribunal within the local limits of whose jurisdiction:

a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

b) any of the defendants, where there are more than one,at the time of making the application,actually and voluntarily resides, or carries on business, or personally works for gain; or

c) the cause of action, wholly or in part, arises.

4. In the present case the documents were executed in Chennai and that the mortgaged properties are also in Chennai. It is also an admitted position that the defendants are from Chennai. However,

the tribunal has rightly pointed out that since the money was advanced from Mumabi, was repayable in Mumbai and in fact some of the instalments were also paid in Mumbai, where alone the bank has got its office, DRT, Mumbai has jurisdiction to entertain and try the original application. The learned counsel appearing for the petitioners however, sought to rely upon the judgment of the Supreme Court in ABC Laminart Pvt Ltd and anr vs. A P Agencies, Salem , AIR l989 SC l239 and a judgement of a learned single Judge of this court in Crown Frozen Foods vs Silver Frozen Foods, 2002(6) BCR 77l in support of his contention that the DRT Mumbai has no jurisdiction to try the case.

5. Neither of these judgements is of any assistance to the learned counsel. In fact the decision in the case of ABC Laminart Pvt Ltd supports the case of the bank rather than the petitioners, where the Supreme Court held as under:

> "The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If

> the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the court where the suit is filed and that contract is found to be invalid such part of cause of action disappears".
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> (emphasis supplied)

6. So far as the decision of the learned single Judge in Crown Frozen Foods's case is concerned the question there was whether mere sanctioning of an advance can confer jurisdiction on the Court within whose limits the loan was sanctioned. The learned single Judge held that sanctioning of an advance is

a unilateral act of the plaintiffs with which defendants are not concerned.This unilateral act of internal sanctions cannot be a part of the cause of action. This decision has no bearing on the issue involved in the present case where admittedly part of the cause of action has arisen in Mumbai inasmuch as the amount borrowed was payable in Mumbai and in fact some of the instalments were paid in Mumbai.

7. The petition is devoid of any substance and hence dismissed.